IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1570 of 1997

in

SPECIAL CIVIL APPLICATION No 4928 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIRECTOR, STOCK HOLDING CENTRAL MEDICAL STORES ORGN.
Versus
P B RAVAL

Appearance:
MR RC KODEKAR, AGP for Appellants
MR KB PUJARA for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 28/03/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

By means of filing this appeal under Clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated February 7, 1997 rendered by the learned Single Judge, in Special Civil Application No. 4928/95, by which the appellants are directed to treat the respondent as in continuous service with effect from March 15, 1983 and pay him the benefits in accordance with law on the basis that he is in continuous service with effect from March 15, 1983.

2. The Director, Stock Holding Central Medical Stores Organisation, Ahmedabad had appointed the respondent as a driver by an order dated April 5, 1983 with effect from March 15, 1983 in view of the resolution of Health and Family Welfare Department dated September 24, 1982. The respondent was entitled to draw salary in the scale of Rs. 260-400 and receive all admissible allowances, but he was appointed on purely temporary basis. He was continued in employment by renewing his appointment on 29 days basis and artificial breaks in service were given. The respondent was thus, continued in service for a period of more than two years from March 15, 1983 till July 5, 1985 continuously and without any break in service, except artificial breaks mentioned above. The record of the petition shows that the respondent is driving car of appellant no.1 since several years. The services of the respondent were orally terminated on July 15, 1985. According to the respondent, the work assigned to him was of a permanent nature and the services were continuously required in the past and, therefore, oral termination of his services as well as giving artificial breaks in service were illegal. Under the circumstances, the respondent instituted Special Civil Application No. 4928/95 and prayed the Court to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the action of the appellants in orally terminating his services with effect from July 15, 1985 and direct the respondent no.1 to treat him to be permanent employee right from the date of his joining service i.e. March 15, 1983 and pay to him all the benefits.

3. When the petition was placed for admission hearing before the learned Single Judge of this Court, initially notice was issued and the appellants had stated through their learned Counsel that services of the

respondent were never terminated by appellant no.1 and that if the respondent wanted service, he could approach appellant no.1 immediately and the appellant no.1 would pass appropriate orders. In view of this statement made at the Bar, the respondent had approached the appellant no.1 and the appellant no.1 had given appointment to the respondent as driver and has been continued as such in service.

4. Though the appellants were duly served, no reply affidavit was filed by any of the appellants controverting the averments made in the petition. The learned Single Judge noted that in view of the statement made at the Bar on behalf of the appellants, the respondent was appointed as driver and, therefore, the prayer to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside action of the appellants in orally terminating the services of the respondent with effect from July 15, 1985 had become infructuous. The learned Single Judge concluded that the respondent was appointed on ad-hoc temporary basis till selection of a candidate by the Departmental Selection Committee through Employment Exchange, but as the appellants had not cared to file reply affidavit either to controvert the averments made in the petition or to point out whether the appellants had made any appointment on regular basis, it was not possible for the Court to direct the appellants to grant the respondent status of permanent employee. However, as the respondent was in continuous service since March 15, 1983 and had put in continuous service of almost 14 years barring the artificial breaks, the learned Single Judge was of the opinion that it was necessary to direct the appellants to treat the respondent as in continuous service with effect from March 15, 1983 and accord him all the consequential benefits. Under the circumstances, the learned Single Judge has, by the impugned judgment directed the appellants to treat the respondent as in continuous service with effect from March 15, 1983 and accord all consequential benefits, which has given rise to present appeal.

5. Mr. R.C.Kodekar, learned A.G.P. submitted that original appointment of the respondent was on ad-hoc as well as temporary basis and, therefore, when benefit of permanency or status of permanency was denied to him, the appellants should not have been directed to treat the respondent as in continuous service with effect from March 15, 1983 and to pay him consequential benefits. According to the learned Counsel for the appellants, appointment of the respondent was on ad-hoc basis till

the regularly selected candidate was available and as process of selection of regular candidate had already commenced, direction to treat the respondent in continuous service with effect from March 15, 1983 and to accord all the consequential benefits to him should not have been granted by the learned Single Judge. What was claimed was that the appointment of the respondent was on ad-hoc basis for a short term on clear understanding that the appointment was for a short term and as the respondent had not been selected by the Staff Selection Committee, directions which are impugned in the present appeal should not have been granted by the learned Single Judge. In support of these submissions, the learned Counsel placed reliance on the decision in Patel E.R. v. Gujarat Ayurved University, Jamnagar, 1987(2) GLR 1299.

6. Mr. K.B.Pujara, learned Counsel for the respondent submitted that artificial breaks in service of the respondent were given by the appellants without any basis and, therefore, the learned Single Judge was justified in directing the appellants to treat the respondent as in continuous service with effect from March 15, 1983. The learned Counsel for the respondent stressed that in Patel E.R. (Supra), the employee was found age-barred as well as had not served for long time and therefore, the respondent should not be denied benefits granted by the learned Single Judge on the basis of the said judgment. What was pleaded by the learned Counsel for the respondent was that the record does not show that the respondent was appointed for a short term on clear understanding that the appointment was for a short term, nor it is pointed out by the appellants that the respondent had at any point of time resisted his selection by the Staff Selection Committee and, therefore, the directions given by the learned Single Judge should be upheld.

7. We have heard the learned Counsel for the parties at length and considered the documents which form part of record of the petition. The finding recorded by the learned Single Judge that the respondent had been driving the car of appellant no.1 for the last 14 years continuously barring the artificial breaks is not challenged by the appellants in this appeal. The appellants have not cared to file any affidavit-in-reply justifying artifical breaks in service of the respondent. It is true that the respondent was appointed on ad-hoc temporary basis till selection of a candidate by the Departmental Selection Committee through Employment Exchange, but the appellants have failed to point out that any appointment on regular basis is made. Looking

to the nature of appointment and duties to be performed by the respondent, it is evident that the respondent is appointed on permanent post and supposed to perform duties continuously. It is relevant to notice that having regard to the facts of the case, the learned Single Judge has not directed the appellants to grant the respondent status of permanent employee, but as artificial breaks in service were not justified and as the respondent was found to be discharging duties continuously for last 14 yearss, a direction has been given to the appellants to treat the respondent as in continuous service with effect from March 15, 1983. In Patel E.R. (supra), the appointment of the petitioner was not only made on ad-hoc basis for a short term, but it was made clear to the petitioner that her appointment was for a short term. Moreover, it was found by the Court in that case that the petitioner had not been selected by the Staff Selection Committee and was also age-barred. It was also noticed in that case that the petitioner had not served for a long time. Under the circumstances, the Court held that the petitioner had no legal right to continue in service, nor there was violation of provisions of Articles 14 or 16 of the Constitution. In our view, the principle laid down in the said case cannot be made applicable to the facts of the present case because at the time when the respondent was appointed as driver with effect from March 15, 1983, he was never found age-barred. It is not the case of the appellants that the respondent had not served for a long time. On the contrary, the appellants have not justified their action of giving artificial breaks in service of the respondent. Under the circumstances, the direction given by the learned Single Judge to the appellants to treat the respondent as in continuous service with effect from March 15, 1983 cannot be considered to be erroneous more particularly when it was found that the respondent was performing his duties as driver since several years. On overall view of the matter, we are satisfied that just directions have been given by the learned Single Judge and no case is made out by the learned Counsel for the appellants to interfere with the same in the present appeal. The appeal,therefore, cannot be accepted and is liable to be dismissed.

8. We may state that while admitting the present appeal, the Court vide order dated April 20, 1998 had given direction to hear this appeal with Letters Patent Appeal No. 151/96. A simple copy of judgment dated July 2, 1999 rendered by the Division Bench comprising Chief Justice Mr. K.G.Balakrishnan (as he then was) and Mr. Justice S.D.Dave in Letters Patent Appeal No. 151/96,

which was directed against judgment rendered in Special Civil Application No. 7735/95 is made available by the Office for perusal of the Court. A simple copy of the said judgment is ordered to be taken on record of the petition. A bare reading of the judgment delivered by the Division Bench makes it abundantly clear that the said matter related to grant of N.A. permission on the basis of interpretation of Section 117(A) of the Gujarat Town Planning and Urban Development Act, 1976. Letters Patent Appeal No.151/96 has nothing to do with the artificial breaks in service of an employee. As observed earlier that appeal is already disposed of vide judgment dated July 2, 1999. Under the circumstances, we have decided the present appeal.

For the foregoing reasons, the appeal fails and is dismissed, with no order as to costs.

(J.M.Panchal,J.) (A.M.Kapadia,J.)

(patel)